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# OFFICE OF THE INDEPENDENT POLICE AUDITOR 2007 MID-YEAR REPORT

## **I. INTRODUCTION**

This 2007 Mid-Year Report documents the auditing and oversight functions of the Office of the Independent Police Auditor (IPA) for the period of January 1 through June 30, 2007. This has been an eventful six months. The second of two public forums was held in January, and the 2006 IPA Year End Report was presented to the City Council in June with substantive policy recommendations. The special Council session on police issues, including the IPA report, was well attended by a wide cross section of members of the public and community members, many of whom presented their perspective to the Council.

This report also updates data on an issue raised consistently by the IPA over the last two years: the rise in the use of the inquiry complaint classification. As the result of policy recommendations presented by the IPA in the 2006 Year End Report and adopted by the Council at the June meeting, the IPA is working with the Chief of Police and the City Manager to revise the current complaint process to include more objective definitions of complaint classifications and to address other complaint issues. It is anticipated that changes in this area will alleviate the majority of the concerns about the classification of complaints.

The IPA provides the community with increased accessibility and accountability for misconduct and policy issues involving the San José Police Department. This report presents statistical information regarding complaints filed during the first six months of 2007 and an update on the progress of the most recent IPA recommendations.

### **A. FUNCTIONS OF THE OFFICE OF THE INDEPENDENT POLICE AUDITOR**

The mission of the Office of the Independent Police Auditor is to provide an independent review of the complaint process, thereby ensuring increased accountability of the San José Police Department (SJPD). The five primary functions of the IPA are:

- To serve as an alternative location to file complaints against San José police officers;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct outreach about the complaint process and the services the office provides to the community;
- To make policy recommendations to enhance and improve policies and procedures of the SJPD; and
- To respond to the scene of and review officer-involved shooting investigations.

# OFFICE OF THE INDEPENDENT POLICE AUDITOR 2007 MID-YEAR REPORT

## B. REPORTING REQUIREMENTS

In 2001 the San José City Council directed the IPA to produce mid-year reports in addition to annual reports. San José Municipal Code Section 8.04.010 mandates that the IPA submit reports to the City Council that: 1) include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken; 2) analyze trends and patterns; and 3) make recommendations.

## C. CONTENT OF THIS REPORT

This report covers the activity of the IPA for the first six months of the 2007 calendar year. It includes data on complaint statistics and provides an update on policy recommendations made in the 2006 Year End Report. No new policy recommendations are presented at this time. The information covered in this report will be discussed in more detail in the next comprehensive year-end report, encompassing the activity of the IPA for the full 2007 calendar year.

## II. UPDATE OF POLICY RECOMMENDATIONS MADE IN THE IPA 2006 YEAR END REPORT

On June 8, 2007, the IPA issued its 2006 Year End Report to Council. That report contained three new policy recommendations. The City Council convened a June 21, 2007 special session to review and discuss the recommendations and key issues contained in the IPA report as well as other reports submitted to council. A synopsis of the policy recommendations and the resulting Council action follows.

**Recommendation 1.** That the Mayor and City Council:

- a. Direct the City Manager to direct the SJPD to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA;
- b. Grant the IPA concurrent authority over the classification of complaints.

The City Council made several directives regarding Recommendation 1a, including:

- Confirm the Independent Police Auditor's right to challenge the Police Department's classification of complaints and inquiries, with ultimate resolution by the City Manager.
- Direct the City Manager, Police Chief and the Independent Police Auditor to work together to develop information packets to include complaint definitions, an explanation of the process and necessary forms in multiple languages for individuals contacting the IPA or Internal Affairs (IA).
- Direct the City Manager to work with the Police Chief and IPA to develop a revised complaint process that determines classification based upon objective criteria and definitions for complaint categories.
- Continued use and increased publicity of the mediation process.

The City Council took no action regarding Recommendation 1b.

## OFFICE OF THE INDEPENDENT POLICE AUDITOR 2007 MID-YEAR REPORT

**Recommendation 2.** That the Mayor and City Council:

- a. Direct the City Manager to direct the SJPD to conduct administrative investigation in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury;
- b. Mandate that the IPA review the administrative investigation in all such cases.

In connection with Recommendation 2a and 2b, the Council did not take immediate action. Instead the Council requested the following:

Confirm the existing authority of the IPA to review officer-involved shootings and in-custody death cases. Direct the City Attorney to return to the City Council at the first meeting in August with a report on the litigation impacts of moving all in-custody death cases that are a result of a use of force to the same level of auditing by the IPA as officer-involved shootings. The City Attorney was further directed to analyze the countywide protocol for in-custody deaths, as well as other critical incidents.

At the City Council meeting on September 18, 2007 further action was taken regarding this item. This action occurred after the reporting period for this report and will be addressed more fully in the 2007 year-end report.<sup>1</sup>

**Recommendation 3.** That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:

- a. Investigation of community-initiated complaints which IA did not investigate;
- b. Investigation of critical incidents in which any SJPD action resulted in death or serious bodily injury and the SJPD did not conduct an administrative investigation;
- c. Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.

The Council took no action on this recommendation.

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<sup>1</sup> At the September 18, 2007 City Council Meeting the City Manager was directed to review all death cases that follow the use of force, with the strong recommendation that the Independent Police Auditor (IPA) participate in the review, to the same level of review by the IPA in officer involved shootings, within the limits of the Charter. The IPA's involvement is limited to participation in the officer involved shooting review panel, or a similar panel if created for in-custody deaths, except when a complaint is filed therefore triggering an audit or a full review. This direction is subject to the meet and confer process.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**III. MID-YEAR STATISTICS**

**A. EXTERNAL / CITIZEN-INITIATED COMPLAINTS**

A complaint records a statement of dissatisfaction that relates to police operations, personnel misconduct, or unlawful acts. All complaints from the public that involve a San José police officer are registered through either the office of the IPA or Internal Affairs (IA) and are documented in a shared IA/IPA database. Complaints from members of the public are “external” complaints. These complaints encompass a wide range of allegations ranging from simple procedural violations, to disrespectful behavior, to serious unnecessary force.

**Complaint Classifications and Trends**

The IPA reviews, monitors, and audits all types of external complaints to ensure that they are classified correctly and the investigation is thorough, objective and fair. Complaints received by the IPA are entered into a shared database and forwarded to IA for classification. Internal Affairs then reviews each case and classifies it as formal, command review, policy, procedural, or inquiry.

Minor rude conduct or procedural violations may be classified as “command review.” According to the IA Unit Guidelines, if the officer does not have a pattern of similar allegations the complaint may be addressed by a review with the officer, the officer’s supervisor and the IA commander. The use of this classification has diminished in the last two years.

“Formal” complaint investigations include interviews of subject officers and are concluded with a finding of whether or not the evidence is sufficient to support the allegation. If supported, a finding of “sustained” is made and discipline may be imposed. There was an increase in complaints classified as formal in the first six months of 2007 compared to 2006.

The definition of an inquiry is that “the complaint is immediately resolved by the intake officer to the satisfaction of the citizen.” This classification definition is being revised at the direction of the City Council. Inquiries are not tracked as formal or informal complaints, may receive limited investigation, and are not recorded in officer’s records as misconduct complaints.<sup>2</sup>

Procedural complaints are, by definition, complaints in which the assigned IA investigator determines, after an initial review, that the “officer acted reasonably and within policy and procedure given the specific circumstances and facts of the incident, and there is no factual basis to support the misconduct allegation,” or there is “a dispute of fact wherein there is no independent information, evidence or witnesses available to support the complaint and another judicial entity is available to process the concerns of the complainant.” *IA Unit Guidelines*. Cases in this classification receive an abbreviated investigation—the complainants and some witnesses are interviewed, however subject officers are not questioned.

Policy complaints register a complainant’s dissatisfaction with an existing policy. The No Boland classification is no longer used following a U.S. Supreme Court decision in May 2006.<sup>3</sup>

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<sup>2</sup> SJPD established a pilot program of tracking police officer’s names on inquiries for a six month period as of April 2007. At the June 21 special Council meeting the City Manager was directed to report on the status of this effort once six months of data are available, along with a staff resource and “value added” impact report.

<sup>3</sup> The U.S. Supreme Court Decision held unconstitutional, as violative of the First Amendment and equal protection clause, California Penal Code §148.6 which required that complainants sign a Boland Admonishment form informing them that they could be prosecuted for a misdemeanor violation if they knowingly filed a false complaint.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**Table 1: External / Citizen-Initiated Complaints Filed**

External Complaints	Mid-Year 2004				Mid-Year 2005				Mid-Year 2006				Mid-Year 2007			
	IPA	IA	Total	%	IPA	IA	Total	%	IPA	IA	Total	%	IPA	IA	Total	%
Formal: Citizen Initiated	16	52	68	36%	20	33	53	32%	26	25	51	22%	33	46	79	32%
Citizen Nexus to Internal Complaints	0	1	1	1%	0	1	1	1%	0	2	2	1%	0	4	4	2%
Informal: Command Review	6	11	17	9%	3	4	7	4%	0	1	1	0%	0	0	0	0%
Procedural Complaints	2	4	6	3%	5	13	18	11%	22	6	28	12%	2	7	9	4%
Policy Complaints	2	2	4	2%	1	0	1	1%	1	1	2	1%	3	0	3	1%
Inquiry	15	34	49	26%	30	41	71	43%	29	100	129	56%	30*	70	100	40%
No Boland	6	3	9	5%	4	2	6	4%	1	9	10	4%	0	0	0	0%
Withdrawn	8	3	11	6%	1	2	3	2%	0	0	0	0%	3	1	4	2%
Pre-Classification	11	13	24	13%	6	0	6	4%	4	3	7	3%	19	30	49	20%
<b>Total Complaints Filed</b>	<b>66</b>	<b>123</b>	<b>189</b>	<b>100%</b>	<b>70</b>	<b>96</b>	<b>166</b>	<b>100%</b>	<b>83</b>	<b>147</b>	<b>230</b>	<b>100%</b>	<b>90</b>	<b>158</b>	<b>248</b>	<b>100%</b>
Citizen Contacts (Not SJPD Comp.)	9	8	17		15	6	21		26	20	46		25	10	35	

\*Of these 30 complaints, 10 were classified as inquiries by the IPA; 20 complaints submitted by the IPA as “pre-classification” were reclassified as inquiries by IA.

**Table 1** reports four years of mid-year external complaints filed by classification. At mid-year 2007 248 complaints from members of the public were filed, up slightly from mid-2006. Of the external complaints filed, 90 were filed in the office of the IPA and 158 were filed at the IA Unit. At mid-year 2007, 79 of 248 complaints, 32% of the total complaints received, were classified as formal complaints, an increase over mid-year 2006 and similar to the percentages in 2004 and 2005.

At mid-year 2007, 49 complaints in the database were listed as “pre-classification.” This is the highest number of complaints waiting to be classified at mid-year during the ten-year period that mid-year reports have been written. The following discussion of the complaints in the various categories is tentative, pending assignment of classification to the 20% of the cases awaiting classification. The IPA 2007 Year End report will provide updated information about the pre-classification complaints.

The number of complaints classified as inquiries decreased at mid-2007; 100 complaints were classified as inquiries, 40% of complaints filed, as compared to 129 classified as inquiries at mid-2006, 56% of the total. The number and percentage of complaints classified as inquiries remains higher than at mid-2004. Complaints classified as inquiries receive little or no investigation and information identifying the subject officer is removed from the record.

The number of cases classified as “procedural” is lower at mid-year 2007, 9 cases, 4% of the total, as compared to 28 cases in this category, 12% of the total, at mid-year 2006.

**Other Statistics to Consider:  
City of San José Population and  
Police Contacts**

The City of San José is the tenth-largest city in the United States and continues to grow. Population increase could generate an increase in police contacts, which may have an impact on the number of police complaints. According to the California Department of Finance, in 2006 the population of the City of San José reached 953,700, a 2.4% increase over a two-year period, from 931,250 in 2004.

Allegations of police misconduct should be considered with the understanding that most San José police officers successfully resolve calls without issues being raised. In the first six months of 2006, members of the SJPD handled 206,092\*\* calls for service from the public; at mid-year 2007 the calls for service totaled 213,799, an increase of 4%. These contacts can cover a wide range of issues, from responding to life threatening situations, to issuing traffic citations, to responding to false alarms.

\*\* SJPD corrected the number of calls for service provided for the 2006 Mid-Year Report from 249,751 to 206,092.

# OFFICE OF THE INDEPENDENT POLICE AUDITOR

## 2007 MID-YEAR REPORT

### **The 2006-2007 Santa Clara Civil Grand Jury Report “Police Misconduct May be Underreported”**

The Santa Clara Civil Grand Jury reviewed the SJPd police misconduct complaint process and released a report entitled, “Police Misconduct May be Underreported” on June 26, 2007. The report contained ten findings and several recommendations, summarized below:

1. The system to classify complaints lacks objective, explicit criteria; the IPA and IA should jointly establish objective and definitive criteria for each category.
2. Complaint forms used by the IPA and IA are different; they should use the same complaint form and it should include: a space for the complainant’s signature, information regarding each classification category, and a space for the complainant to indicate which classification he/she believes is appropriate.
3. The complaint form should provide an advisement to the complainant of his/her right to receive a copy of his/her written or tape-recorded statements.
4. The IPA should be authorized to formally classify complaints; currently only IA may do so.
5. Subject officer and other essential information should be entered in the IAPro database and available to the IPA.
6. The total number of complaints in the Inquiry classification rose from 113 in 2003 to 233 in 2006.
7. In 2005 and 2006, the IPA disagreed with the classification of complaints as Inquiries in 50 percent of 401 instances. No recommendation was made regarding this finding.
8. The SJPd began an “off-line data collection pilot program” of Inquiries in April of 2007; the subject officer information should be entered in the IAPro database and made available to the IPA.
9. Currently, IPA authority includes review of closed investigative reports and participation in initial officer-involved shooting investigations along with in-depth audit of all use of force complaints. The IPA should be given additional authority to co-investigate all cases that IA does not investigate, that the IPA questions, that include officer-involved shootings, or that concern the use of force.
10. Both the IPA and IA should undergo performance audits.

### **City of San José Response to the Civil Grand Jury**

On September 18, 2007, the City Council accepted the response authored by the City Attorney and City Manager (Response) to the Civil Grand Jury Report and authorized release of the Response to the Grand Jury. The Response included the following specific items:

- Regarding Grand Jury recommendations concerning complaint classifications, the Response stated that the City Council has issued a directive to develop objective criteria for complaint classifications and has directed the development of a packet of intake materials to be given to complainants. The Response explained that revised complaint forms will include information advising complainants of their right to receive copies of their written statements and/or tape recorded interviews.
- The Response disagreed with the Grand Jury recommendation that the IPA be given the authority to classify citizen complaints. The Response described several Council referrals issued at the special Council meeting held June 21, 2007 regarding inquiry complaints.
- The Response expressed the City’s agreement regarding Grand Jury findings on #6 and #7 regarding the IPA reporting of complaints classified as Inquiries over the last two years.
- Regarding #8, the Council asked the City Manager to report on the SJPd “self-initiated practice” of tracking police officers’ names on Inquiries once six months of data are available.
- Regarding the expansion of IPA authority to co-investigate cases not investigated by IA, the Response expressed City disagreement and provided clarification regarding the IPA’s existing role immediately following officer-involved shootings.
- On the issue of audits of the IPA and IA, the Response described existing performance measurements for both the IPA and IA Unit.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**B. INTERNAL / DEPARTMENT-INITIATED COMPLAINTS**

The Office of the Chief of Police initiates internal complaints after receiving information from SJPD staff alleging a violation of Department policy or a violation of law by a member of the SJPD. The IPA does not audit most internal complaints because they primarily involve administrative issues that may not directly impact members of the public. The IPA audits internal complaints alleging misconduct if the complaint has a nexus to a citizen. **Table 2** reports that 23 internal complaints were initiated by the SJPD in the first six months of 2007. This represents an increase over the last three years. Four department-initiated cases filed during the first six months of 2007 had a “citizen-nexus” and were subject to audit/monitoring by the IPA. Six department-initiated complaints regarding 2006 incidents were not entered into the database by the SJPD until 2007 and therefore were not reported in the IPA 2006 Year End Report. The IPA is working with the Department to find a solution to this issue to ensure accurate reporting of department-initiated cases within the reporting period.

**Table 2: Internal / Department-Initiated Complaints Filed**

Internal Complaints	Mid-Year 2004	Mid-Year 2005	Mid-Year 2006	Late Entry 2006	Mid-Year 2007
Department Initiated	13	17	19	6	23
<b>Total</b>	<b>13</b>	<b>17</b>	<b>19</b>	<b>6</b>	<b>23</b>

**C. ALLEGATIONS FILED**

Issues raised in each complaint, whether initiated by the Chief of Police or a member of the public, are analyzed and categorized into descriptive allegation types. The total number of allegations is greater than the number of complaints filed because a single complaint may include more than one allegation.

In order to more accurately determine the nature of all complaints presented, in 2005 the IPA and IA agreed to begin delineating allegations contained in inquiry complaints—this was a new procedure and was not fully in effect in the early months of 2005. Ten inquiries recorded in early 2005 did not have allegations delineated.

The number and type of allegations received during the first six months of 2005, 2006 and 2007 are enumerated in **Table 3**. There were 542 total allegations received in the first six months of 2007 as compared to 427 at mid-year 2006 and 344 at mid-2005. The increase in allegations at mid-2007 is due in part to the increased number of complaints filed as well as a slight increase in allegations per complaint, from 1.86 in 2006 to 2.18 in 2007. The lower number of allegations recorded in inquiries at mid-2007 reflects the lower number of complaints classified as inquiries at the close of the reporting period; at that time a large number of complaints, 20% of those filed, had not been classified at the mid-year point.

The three most common types of allegations continue to be improper procedure, rude conduct and unnecessary force. Improper procedure allegations remained constant as a percentage of the total allegations; however, at mid-year 2007 a larger percentage of improper procedure allegations were contained in complaints in investigated classifications and a smaller percentage in complaints classified as inquiries. Allegations of unwarranted search increased from 16 in 2006, 4% of the total allegations, to 47, 9% of the total, in 2007.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**Table 3: Types of Allegations Received<sup>4</sup>**

Allegations Received Formal/Informal Cases	Mid-Year 2005		Mid-Year 2006		Mid-Year 2007	
	#	%	#	%	#	%
Improper Procedure	86	34%	69	26%	130	32%
Unnecessary Force	59	23%	58	22%	82	20%
Rude Conduct	33	13%	38	14%	52	13%
Unlawful Arrest	22	9%	36	14%	38	9%
Unlawful Search	12	5%	13	5%	38	9%
Unofficer-like Conduct	11	4%	5	2%	13	3%
Missing/Damaged Property	7	3%	10	4%	16	4%
Failure to Take Action	11	4%	10	4%	8	2%
Racial Profiling	3	1%	6	2%	7	2%
Discrimination	4	2%	10	4%	8	2%
Excessive Police Service	3	1%	1	0%	2	0%
Harassment	3	1%	4	2%	4	1%
Policy/Procedural	0	0%	3	1%	7	2%
Delayed/Slow in Response	0	0%	1	0%	2	0%
<b>Total Allegations</b>	<b>254</b>	<b>0%</b>	<b>264</b>	<b>100%</b>	<b>407</b>	<b>100%</b>

Allegations Received Inquiries	Mid-Year 2005		Mid-Year 2006		Mid-Year 2007	
	#	%	#	%	#	%
Improper Procedure	40	44%	76	47%	59	44%
Unnecessary Force	6	7%	11	7%	5	4%
Rude Conduct	24	27%	51	31%	43	32%
Unlawful Arrest	4	4%	5	3%	3	2%
Unlawful Search	5	6%	3	2%	9	7%
Unofficer-like Conduct	2	2%	3	2%	2	1%
Missing/Damaged Property	2	2%	1	1%	6	4%
Failure to Take Action	3	3%	4	2%	3	2%
Racial Profiling	0	0%	2	1%	1	1%
Discrimination	0	0%	2	1%	1	1%
Excessive Police Service	1	1%	1	1%	0	0%
Harassment	2	2%	3	2%	1	1%
Policy/Procedural	1	1%	0	0%	1	1%
Delayed/Slow in Response	0	0%	1	1%	1	1%
<b>Total Allegations</b>	<b>90 *</b>	<b>0%</b>	<b>163</b>	<b>100%</b>	<b>135</b>	<b>100%</b>

\*10 inquiries recorded in 2005 had no allegations delineated.

**D. UNNECESSARY FORCE COMPLAINTS**

**Table 4** reflects the number of external complaints reporting unnecessary force and **Table 5** reports the number of unnecessary force allegations within those complaints. Unnecessary force complaints and allegations are divided into two categories: Class I and Class II. A Class I allegation involves serious bodily injury requiring immediate medical care. Class II force is alleged when the complainant reports no injuries or the injuries were not serious enough to require immediate medical attention.

At mid-year 2007, 55 complaints containing at least one allegation of unnecessary force had been received; 50 were classified as formal/informal complaints and five were classified as inquiry. The percentage of unnecessary force external complaints filed by mid-year 2007, 20%, relative to the total number of external complaints, has not changed significantly from the data in preceding years, although the number of force complaints has increased.

**Table 4: Unnecessary Force External Complaints Filed**

Period	Formal/Informal Complaints				Inquiry Complaints			Total Number of Complaints
	UF Class I Complaints	UF Class II Complaints	Total UF Complaints	% Total Complaints	UF Class I Inquiry Complaints	UF Class II Inquiry Complaints	Total UF Inquiry Complaints	
Mid-Year 2004	5	35	40	21%	N/A	N/A	N/A	189
Mid-Year 2005	6	32	38	23%	0	6	6	166
Mid-Year 2006	9	33	42	18%	3	7	10	230
Mid-Year 2007	9	41	50	20%	0	5	5	248

<sup>4</sup> Types of allegations in complaints have only been accessible for reporting since 2005 due to the change in database tracking of complaints; therefore, only three years of allegation data are itemized in this report. The large increase in allegations in mid-2006 and mid-2007 is due in part to the increased number of complaints filed and in part to a change in statistical recording in 2005.



**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**Allegations in Unnecessary Force Complaints**

The number of unnecessary force allegations can be higher than the number of unnecessary force complaints because a complaint may contain more than one force allegation. **Table 5** shows the number of unnecessary force allegations in all external complaints filed by mid-year 2007. A comparison of the data from 2004 through 2007 reveals a steady increase in the number of unnecessary force allegations; at mid-year 2007, the number of unnecessary force allegations was 87 compared to 69 filed at mid-year 2006 and 66 filed at mid-year 2005. The force allegations as a percentage of the total allegations has remained fairly constant from mid-2005 through mid-2007 as enumerated in **Table 3** on page 8. The number of Class I allegations contained in formal/informal complaints filed in the first six months of 2007 was 21.

**Table 5: Unnecessary Force Allegations Filed in External Complaints**

Period	UF Class I Allegations in Complaints	UF Class II Allegations in Complaints	Total UF Allegations in Complaints	UF Class I Allegations in Inquiry Complaints	UF Class II Allegations in Inquiry Complaints	Total UF Allegations in Inquiry Complaints
Mid-Year 2004	7	53	60	N/A	N/A	N/A
Mid-Year 2005	8	52	60	0*	6*	6*
Mid-Year 2006	9	49	58	4	7	11
Mid-Year 2007	21	61	82	0	5	5

\* 10 inquiries recorded in 2005 had no allegations delineated

**Table 6** shows a breakdown of the dispositions of unnecessary force allegations in complaints closed by IA at mid-year 2004 through 2007. At mid-year 2007, one unnecessary force allegation in one complaint was sustained.

**Table 6: Disposition of Unnecessary Force Allegations in External Complaints**

Disposition	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006		Mid-Year 2007	
	UF Class I	UF Class II	UF Class I	UF Class II	UF Class I	UF Class II	UF Class I	UF Class II
Sustained	0	0	0	0	0	0	0	1
Not Sustained	0	7	0	3	0	13	0	9
Exonerated	3	49	6	27	0	27	6	28
Unfounded	0	3	0	6	0	4	1	9
No Finding	1	4	0	4	1	14	0	11
Within Procedure	0	1	0	6	0	8	2	13
No Misconduct Determined	0	0	0	6	0	2	0	0
<b>Total Allegations</b>	<b>4</b>	<b>64</b>	<b>6</b>	<b>52</b>	<b>1</b>	<b>68</b>	<b>9</b>	<b>71</b>

The IPA tracks the level of injury alleged in unnecessary force complaints. **Table 7** shows the level of injury reported by complainants in the first six months of 2004 through 2007.

**Table 7: Complainant's Level of Injury**

Degree of Injury	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006		Mid-Year 2007	
	Number	%	Number	%	Number	%	Number	%
Major	2	5%	2	7%	1	3%	4	10%
Moderate	5	13%	3	10%	4	11%	2	5%
Minor	22	55%	24	80%	29	81%	24	57%
None	4	10%	1	3%	2	6%	7	17%
Unknown	7	18%	0	0%	0	0%	5	12%
<b>Total</b>	<b>40</b>	<b>100%</b>	<b>30</b>	<b>100%</b>	<b>36</b>	<b>100%</b>	<b>42</b>	<b>100%</b>

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**E. MULTIPLE COMPLAINTS RECEIVED BY INDIVIDUAL OFFICERS**

The IPA tracks the number of complaints received by individual SJPD officers. **Table 8** provides an overview of this breakdown. The number of officers recorded as receiving complaints has increased at mid-2007 over mid-2006—this change correlates with the rise during this period in investigated cases in which officer’s names are recorded and/or retained and the decrease in complaints classified as inquiries in which officer’s names are not recorded in the complaint database.

The impact of the number of complaints classified as inquiries and the corresponding increase or decrease in the number of officers tracked as receiving misconduct complaints can be seen in this comparative table. Although the number of identified officers receiving complaints in the last four years has gone down, the number of officers receiving multiple complaints has increased since 2004.

With the increase in the number of complaints classified as formal investigations in the first six months of 2007, the number of officers named in complaints also increased. The number of officers receiving one complaint nearly doubled since 2006, as did the number of officers receiving multiple complaints. Yet, reviewing four years of data, the number of named officers at mid-year 2007 remains lower than the number of officers named in complaints at mid-year 2004, a period in which fewer cases were classified as inquiries.

**Table 8: Complaints Received by Individual Officers in a Six-Month Period**

Period	Officers Receiving 1 Complaint	Officers Receiving 2 Complaints	Officers Receiving 3 Complaints	Officers Receiving 4 Complaints	Total Officers Receiving Complaints	Total Numbers of Complaints *
Jan - June 2004	169	5	1	0	175	120
Jan - June 2005	103	7	2	2	114	86
Jan - June 2006	76	9	1	0	86	91
Jan - June 2007	134	18	4	0	156	144

\*This total includes the following types of classified citizen complaints that are recorded in officer’s personnel records: Formal/Citizen Initiated, Command Review, Procedural, and Policy.

**F. COMPLAINTS CLOSED BY INTERNAL AFFAIRS**

**Table 9** indicates the number and types of complaints closed by IA during the first six months of 2004 through 2007. The number of complaints closed may include complaints that were filed in the prior year. In the first six months of 2007, IA closed 240 cases, 227 citizen-initiated/external complaints and 13 internal complaints.

**Table 9: Types of Complaints Closed**

External Complaints	Mid-Year	%	Mid-Year	%	Mid-Year	%	Mid-Year	%
	2004		2005		2006		2007	
Formal: Citizen Initiated Complaints	71	40%	36	29%	45	23%	64	28%
Citizen Nexus to Internal Complaints	0	0%	0	0%	0	0%	1	0%
Informal: Command Review Complaints	21	12%	7	6%	5	3%	0	0%
Procedural Complaints	11	6%	18	14%	15	8%	38	17%
Policy Complaints	3	2%	0	0%	1	1%	4	2%
No Boland/Withdrawn	24	14%	10	8%	10	5%	12	5%
Inquiry	46	26%	54	43%	122	62%	108	48%
<b>Total Complaints Closed</b>	<b>176</b>	<b>100%</b>	<b>125</b>	<b>100%</b>	<b>198</b>	<b>100%</b>	<b>227</b>	<b>100%</b>

  

Internal Complaints	Mid-Year 2004	Mid-Year 2005	Mid-Year 2006	Mid-Year 2007
Department Initiated	18	16	22	13
<b>Total</b>	<b>18</b>	<b>16</b>	<b>22</b>	<b>13</b>

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**G. FINDINGS OF INTERNAL AFFAIRS INVESTIGATIONS**

Tables 10 and 11 detail the findings of IA complaint investigations for each allegation contained in either an internal or external complaint. There are no findings made in inquiry cases. The standard of evidence used by IA is “preponderance of evidence.” This means that for a sustained finding the evidence must indicate that it is more likely than not that a violation occurred, i.e. a weight of 51%.

At mid-year 2007, four allegations were sustained in three of 227 external citizen initiated cases closed. In internal department-initiated cases 14 allegations were sustained in 11 of 13 cases closed.

**Table 10: Disposition of Allegations: External/Citizen-Initiated Complaints**

Disposition	Allegations														Total	%
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US		
Sustained					1			1		2					4	1%
Not Sustained		4			9		1	8	4	21			1	1	49	14%
Exonerated				6	28		4	23		1	4	16		3	85	24%
Unfounded				1	9			4	2	7	6	1		4	34	10%
No Finding		3			11	4	1	26	2	10	3	8	3		71	20%
Within Procedure			1	1	13	3		25			1	12		9	65	19%
No Misconduct Determined	1					2		7	2	16	5	2			35	10%
Command Review															0	0%
Within Policy			2			1	1								4	1%
<b>Formal/Informal Allegations Closed</b>	<b>1</b>	<b>7</b>	<b>3</b>	<b>8</b>	<b>71</b>	<b>10</b>	<b>7</b>	<b>94</b>	<b>10</b>	<b>57</b>	<b>19</b>	<b>39</b>	<b>4</b>	<b>17</b>	<b>347</b>	<b>100%</b>
<b>Allegations in Closed Inquiries</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>8</b>	<b>4</b>	<b>1</b>	<b>64</b>	<b>3</b>	<b>40</b>	<b>1</b>	<b>6</b>	<b>2</b>	<b>9</b>	<b>141</b>	
<b>Total Allegations Closed</b>	<b>2</b>	<b>8</b>	<b>4</b>	<b>8</b>	<b>79</b>	<b>14</b>	<b>8</b>	<b>158</b>	<b>13</b>	<b>97</b>	<b>20</b>	<b>45</b>	<b>6</b>	<b>26</b>	<b>488</b>	

**Table 11: Disposition of Allegations: Internal/Department-Initiated Complaints**

Disposition	Allegations														Total	%
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US		
Sustained								10	3				1		14	82%
Not Sustained								1					1		2	12%
Exonerated																0%
Unfounded													1		1	6%
No Finding																0%
Within Procedure																0%
No Misconduct Determined																0%
Command Review																0%
Within Policy																0%
<b>Total Allegations</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>17</b>	<b>100%</b>

Legend of Allegations		
ES= Excessive Police Service	FA= Failure to Take Action	RP= Racial Profiling
D= Discrimination	H= Harassment	UA= Unlawful Arrest
DR= Delay in Response/Slow Response	IP= Improper Procedure	UC= Unofficer like Conduct
F1= Unnecessary Force (w/medical)	MDP=Missing/Damaged Property	US= Unlawful Search
F2= Unnecessary Force (w/o medical)	RC= Rude Conduct	

**H. SUSTAINED COMPLAINTS**

Complaints are resolved differently based upon the classification of the complaint. Table 12 indicates that of 103 external complaints closed in classifications in which officers names are tracked, three complaints were sustained, resulting in a 3% sustained rate for the first half of 2007. The “sustained rate” is calculated based upon the number of sustained complaints among those classified as formal,

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

command review, or procedural. The number and percentage of sustained external cases at mid-2007 is lower than in the past two years, and is significantly lower than the 11 cases sustained, and 11% of external complaints closed at mid-year 2004.

**Table 12: Formal/Informal Complaints and Sustained Cases**

Period/Type of Complaints	Closed Investigated Complaints	Sustained Complaints	Sustained Rate
2004 Mid-Year/External Complaints	102	11	11%
2004 Mid-Year/Internal Complaints	18	17	94%
2005 Mid-Year/External Complaints	61	4	7%
2005 Mid-Year/Internal Complaints	16	14	88%
2006 Mid-Year/External Complaints	65	6	9%
2006 Mid-Year/Internal Complaints	22	22	100%
2007 Mid-Year/External Complaints	103	3	3%
2007 Mid-Year/Internal Complaints	13	11	85%

**I. OFFICER-INVOLVED SHOOTINGS / CRITICAL INCIDENTS**

**Officer-Involved Shooting**

One non-fatal officer-involved shooting incident occurred during the first six months of 2007. In May 2007, in an incident in which officers were investigating a number of robberies, an officer was shot by a fellow officer whose gun discharged accidentally during an enforcement action to stop an attempted robbery of a pizza delivery man. Because this case did not result in a fatality, there was no Grand Jury hearing; administrative reviews/investigations of the use of the firearm related to this incident are pending.

The IPA was not notified of this incident by the IA Commander and therefore did not respond to the scene for a briefing. According to procedures developed in 2004, the IPA is to be notified by the IA Commander immediately after an officer-involved shooting and may respond to the incident scene for a briefing regarding the circumstances of the shooting. The SJPD maintains that this incident was not within the established protocol because the shooting victim was an officer and the shooting was accidental. The IPA will initiate further discussion with the City Manager and the SJPD to gain consensus regarding the existing protocol and the scope of its application.

**Fatal Critical Incident**

There was one fatal critical incident that involved an in-custody death in the first six months of 2007. A complaint has been filed regarding this incident.

**Table 13: Critical Incident Resulting in Death in the First Six Months of 2007**

Case	Ethnicity	Mental Illness History?	Person Armed?	Police Weapons Used?	Cause of Death*	Within Policy?
1	Hispanic	Unknown	No	Taser	Cardiopulmonary arrest during a violent struggle in an individual under the influence of Phencyclidine (PCP). <b>Other Significant Conditions:</b> Hypertensive heart disease, coronary artery disease, obesity and Taser use. <b>Manner of Death:</b> Undetermined.	Pending

\* Santa Clara County Medical Examiner's Report, August 30, 2007.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**J. AUDITING COMPLAINTS**

Auditing by the IPA is the final step in the processing of a complaint, and is conducted prior to notifying the complainant or the subject officer of the findings. Audits involve a critical analysis of the circumstances leading to the misconduct complaint and evaluation of the quality of the investigation. The audit process is in place to provide assurance to the community that complaints are taken seriously and examined thoroughly, impartially, and without preconceived conclusions.

**Table 14: Types of Complaints Closed and Audited at Mid-Year 2007**

External Complaints	Mid-Year 2007	
	IA Closed	IPA Audited
Formal: Citizen Initiated Complaints	64	63
Citizen Nexus to Internal Complaints	1	1
Informal: Command Review Complaints	0	1
Procedural Complaints	38	35
Policy Complaints	4	3
Inquiry	108	108
No Boland/Withdrawn	12	12
<b>Total Complaints Closed</b>	<b>227</b>	<b>223</b>

**Table 14** delineates types of complaints closed and audited during the first six months of 2007. Through audits the IPA reviews a completed investigation and the findings reached by IA. The IPA staff examines the file to determine if the investigation conducted was complete, thorough, objective and fair, and that the findings are

supported by the evidence. The audit of a complaint results in closure of the case, request for additional investigation, or disagreement with the final investigation. **Table 15** reflects complaints audited during the first six months of 2007, as compared with mid-2004 through mid-2006. In the first six months of 2007, of the 115 investigated complaints audited, the IPA agreed with the dispositions of IA in 70 cases, 61%<sup>5</sup>, after the first review. During this period, 62 complaints were identified by the IPA as warranting additional discussion or investigation, 17 of which were still under review at mid-year 2007. The IPA audit process resulted in 28 cases, 24%, in which the IPA and IA disagreed on the investigation and/or classification. The number and percentage of investigated complaints in which the IPA and IA have disagreed at mid-2007 have increased over the same reporting periods in 2004 through 2006.

**Table 15: IPA Audit Determinations of Complaints**

Audit Determination in Investigated Cases	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006		Mid-Year 2007	
	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	79	75%	54	95%	41	60%	70	61%
Agreed after Further Action	24	23%	3	5%	20	29%	17	15%
Disagreed after Further Action	3	3%	0	0%	7	10%	28	24%
<b>Total Complaints Audited</b>	<b>106</b>	<b>100%</b>	<b>57</b>	<b>100%</b>	<b>68</b>	<b>100%</b>	<b>115</b>	<b>100%</b>
<b>Audits in Progress</b>	<b>0</b>	<b>N/A</b>	<b>7</b>	<b>N/A</b>	<b>23</b>	<b>N/A</b>	<b>17</b>	<b>N/A</b>

Audit Determination in Inquiry Cases	Mid-Year 2007	
	Audits	%
Disagreed with Inquiry Classification	53	49%
Agreed with Inquiry Classification	31	29%
Insufficient Information	24	22%
<b>Total</b>	<b>108</b>	<b>100%</b>

In addition to the investigated complaints audited, the IPA audited 108 inquiry complaints closed by mid-year 2007. The IPA agreed with the inquiry classification in 31 cases, 29% of the inquiries audited; the IPA disagreed with the inquiry classification in 53 cases, 49% of the complaints audited. There was insufficient information to evaluate the classification of 24 inquires audited.

<sup>5</sup> This percentage does not include the IPA audit determination of inquiry complaints.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR  
2007 MID-YEAR REPORT**

**K. OFFICER DISCIPLINE**

The type of discipline that is imposed on officers ranges from counseling and/or training to termination. **Table 16** provides a breakdown of the actions taken and the type of discipline imposed during the first six months of the year.

Of 227 external complaints closed in the first six months of 2007, three officers received discipline, ranging from counseling to termination in three citizen-initiated/external cases. In contrast, in the 13 internal department-initiated cases closed there were 14 sustained allegations in 11 sustained complaints at mid-year 2007; in these cases 14 officers were disciplined or received counseling during this period.

**Table 16: Discipline Imposed on Officers**

Discipline Imposed	Mid-Year 2004				Mid-Year 2005				Mid-Year 2006				Mid-Year 2007			
	Officers in External Comps.	Officers in Internal Comps.	Total	%	Officers in External Comps.	Officers in Internal Comps.	Total	%	Officers in External Comps.	Officers in Internal Comps.	Total	%	Officers in External Comps.	Officers in Internal Comps.	Total	%
Training	0	0	0	0%	0	0	0	0%	1	0	1	3%	0	0	0	0%
Training & Counseling	12	2	14	37%	7	1	8	30%	3	2	5	16%	0	0	0	0%
Documented Oral Counseling (DOC)	6	7	13	34%	3	7	10	37%	2	9	11	34%	2	10	12	71%
Letter of Reprimand	0	2	2	5%	0	0	0	0%	1	2	3	9%	0	1	1	6%
10- Hour Suspension	0	1	1	3%	0	2	2	7%	0	7	7	22%	0	0	0	0%
20- Hour Suspension	0	0	0	0%	0	1	1	4%	0	0	0	0%	0	0	0	0%
30- Hour Suspension	0	0	0	0%	0	1	1	4%	0	0	0	0%	0	2	2	12%
40- Hour Suspension	0	2	2	5%	0	0	0	0%	0	2	2	6%	0	1	1	6%
Settlement Agreement	0	1	1	3%	0	2	2	7%	1	1	2	6%	0	0	0	0%
Demotion	0	0	0	0%	1	0	1	4%	0	0	0	0%	0	0	0	0%
Termination	1	3	4	11%	0	0	0	0%	1*	0	1*	3%	1	0	1	6%
Retirement before Discipline	0	0	0	0%	0	1	1	4%	0	0	0	0%	0	0	0	0%
Resigned before Discipline	1	0	1	3%	0	1	1	4%	0	0	0	0%	0	0	0	0%
<b>Total Discipline Imposed</b>	<b>20</b>	<b>18</b>	<b>38</b>	<b>100%</b>	<b>11</b>	<b>16</b>	<b>27</b>	<b>100%</b>	<b>9</b>	<b>23</b>	<b>32</b>	<b>100%</b>	<b>3</b>	<b>14</b>	<b>17</b>	<b>100%</b>

\* The termination in the 2006 Mid-Year report was reversed in arbitration and a 30-hour suspension was imposed.

## OFFICE OF THE INDEPENDENT POLICE AUDITOR 2007 MID-YEAR REPORT

### IV. CONCLUSION

The IPA 2007 Mid-Year Report contains current statistics and a review of the issues that have been raised over the past two years. Review of complaint data for the first six months of the year reveals a slight increase in the overall number of complaints filed, and a change in the classification of the complaints. The increase in fully investigated cases provides the IPA with a more complete examination of misconduct issues for audit, allowing the IPA to provide the Council and the community the accountability afforded by the oversight process.

During the special City Council meeting on June 21, 2007, Council recommended that the Police Department, the City Manager and the IPA work together to develop a revised complaint process based upon developing objective criteria for complaint classifications. Revising the process will impact the classification and investigation of complaints; related effects and changes brought about by the revisions will be reflected in future reports.

The Council requested a City Attorney analysis of potential litigation impacts from the IPA recommendation that a new administrative process be developed within the SJPD to investigate critical incidents in which an officer's use of force results in death or serious bodily injury and the authority of the IPA to review such investigations. The City Attorney's analysis was presented at the September 18, 2007 Council Meeting. Further details and updates reflective of this council action will be included in the IPA 2007 Year End Report.

The 2006-2007 Santa Clara County Civil Grand Jury Report highlighted several issues raised by the IPA in 2006 and early 2007, some of which will be addressed during the review of the current process. The IPA will continue to work to address these issues through collaboration with the SJPD and the City Manager's Office, and with future recommendations.

We would like to take this opportunity to acknowledge the cooperation of the San José Police Department and, specifically, the efforts of the Internal Affairs Unit in providing the needed information and documentation to make the work of the IPA possible.

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